

January 19, 2010

Ms. Wendy Phillips
California Regional Water Quality Control Board (CARWQCB)
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: December 17, 2009 Tentative Order for Issuance of
Waste Discharge Requirements Prohibiting Discharge Malibu La Paz, 3700 La Paz
Lane, Malibu, CA File No. 08-101

Dear Ms. Phillips:

On behalf of Malibu La Paz Ranch ("La Paz" or "Applicant"), LLC, Schmitz & Associates, Inc. ("Schmitz") submits the following comments in response to the Los Angeles Regional Water Quality Control Board ("Board") December 17, 2009 Tentative Order for Issuance of Waste Discharge Requirements Prohibiting Discharge at Malibu La Paz, 3700 La Paz Lane, Malibu, CA 90265 (File No. 08-0101). This response has been prepared in conjunction with La Paz's Wastewater Engineer, Lombardo Associates, Inc.

As explained below, the Tentative Order is incomplete and misleading. The responses below are numbered to correspond to the numbered paragraphs in the Tentative Order.

1. On December 22, 2006, Malibu La Paz LLC ("La Paz" or "applicant") submitted an incomplete Application/Report of Waste Discharge ("ROWD") to the California Regional Water Quality Control Board for the Los Angeles Region ("Regional Board"). The ROWD described a proposed project that would support offices, retail stores, and restaurants, in seven buildings totaling 112,508 square feet on 15 acres at 3700 La Paz Lane in the City of Malibu.

1. The Tentative Order misstates the contents of La Paz's application and original submittal. On December 22, 2006 Schmitz employee, Matthew Dzurec, submitted on behalf of the applicant, an application for a Report of Waste Discharge ("Application") to the Los Angeles Regional Water Quality Control Board. The application concerned two separate proposed projects (.15 Floor Area Ratio ("FAR") Project and the .20 FAR Project). Both projects were similar in nature and proposed similar treatment methods and discharge volumes; plans were submitted to the Board for both projects on December 22, 2006. The Board states incorrectly in paragraph 1 of its findings that only one project was proposed for a 112, 058 sq. ft commercial development. La Paz has never submitted an application for 112, 058 sq. ft. of proposed development. La Paz's .15 FAR project proposed 99,117 sq. ft. of commercial retail and office space while La Paz's .20 FAR project iteration proposed 132, 058 sq. ft. of commercial retail and office development.



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The Board also states inaccurately that La Paz submitted an "incomplete" application to the Board. After submitting its application to the Board the applicant did not receive a written response to its application for over a year from the date of submittal. In fact, the applicant did not receive any form of communication from the Board regarding its application until February 28, 2007 when Schmitz employee Matt Dzurec received a phone call from Board staff member Rod Nelson requesting only that the applicant provide the Board with a \$900 check for processing fees.

2. In the engineering materials submitted with the December 22, 2006 ROWD, the applicant proposed a treatment system with fixed activated sludge and disinfection using chlorine, with disposal capacity of 30,000 gallons per day (gpd) through: (a) discharge of 22,500 gpd to groundwater via leachfields, and (b) reuse of 7,500 gpd for spray irrigation of on-site landscaping. The applicant's proposal also included storage of 50,000 gpd to hold the treated wastewater during 38 to 90 days when irrigation would not be appropriate.

2. This paragraph mischaracterizes the design and function of La Paz's original proposed wastewater system (Ensitu Engineering design). La Paz's original 2006 Application did not propose spray irrigation as is stated. Spray irrigation with reclaimed effluent would require the approval of a Title 22 compliant Wastewater Treatment Facility by the California Department of Public Health ("CADPH") and no such facility was proposed in the December 22, 2006 application. In fact La Paz originally proposed to dispose of all of its effluent through drip irrigation (Geoflow©) at approximately one foot below grade. La Paz's wastewater engineer at that time, Ensitu Engineering, posited that much of the treated effluent that would be dispersed through the drip irrigation would be evapotranspired by plant root uptake thus minimizing the amount of treated wastewater that would enter the groundwater. The engineer designed the system in accordance with standard engineering practices and factors of safety to accommodate peak flows of up to 36,220 GPD (.20 Preferred Project) and 29,620 GPD for the smaller .15 FAR project iteration (alternative project). Ensitu found that average (actual) daily effluent flows would be 7500 GPD. Hence, the 7500 GPD figure reflects the actual wastewater flows predicted to be dispersed (via drip irrigation only) on site. The original application proposed to utilize 5 "infiltrator chambers" only in the event that soil horizon leaching would not be appropriate (i.e., where wet weather made soil horizon leaching inadvisable and where the applicant's proposed 50,000 gallon effluent storage tank was full.) In other words, the applicant did not propose to discharge effluent to the more conventional leach fields (infiltrator chambers) until it was absolutely necessary. Board comments stating that the applicant proposed the "discharge of 22,500 gpd to groundwater via leach fields, and reuse of 7,500 gpd for spray irrigation of onsite landscaping" is therefore entirely inaccurate.

3. In the 31 months following the initial incomplete ROWD on March 2, 2007, the applicant changed its design and operating approach and revised the ROWD in many supplemental submittals.

3. Once again the Board never claimed the application was incomplete until January 15, 2008 (over one year after submittal) and no request was made by the Board to the applicant (in 2007) for additional materials. The timeline in this paragraph is missing many key dates and much significant information which are as follows:

- Between February 28, 2007 and April 12, 2007, Schmitz made several attempts by telephone and email to contact Board staff to obtain a filing determination for its application. There were several discussions with Board staff wherein they advised of their current workload and processing backlogs, but no filing determination was provided by Board staff.
- On April 12, 2007, Board staff member Toni Calloway left a telephone message for Schmitz Associate Planner Steven Reyes stating that two new engineers were to be hired by the Board next week and at that time La Paz's application would be assigned to a staff member for review.
- In early May of 2007, Board staff member Wendy Phillips informed Associate Planner Steve Reyes by telephone that Board staff would not process La Paz's application until La Paz had received California Environmental Quality Act ("CEQA") approval from the City of Malibu.
- Following the May 2007 telephone conference with Board staff member Wendy Phillips, Schmitz contacted the Board multiple times in an effort to obtain further comment and direction from the Board. The Board advised that it would not offer further comment nor would it process the application until such time as the City of Malibu had completed the CEQA process and certified the Final Environmental Impact Report ("FEIR").
- On or about September 27, 2007 the City of Malibu circulated the La Paz Draft Environmental Impact Report ("DEIR") for review through the State Clearing House beginning the 45 day review period required by CEQA. The public review period ended on November 13, 2007. All responsible agencies including the Los Angeles Regional Water Quality Control Board were presented with copies of the DEIR for review and comment. The Board did not offer written comment during the 45 day review period.
- On October 29, 2007 Donald W. Schmitz II, AICP, representative of the applicant, participated in a telephone conference with Board staff members as well as representatives for the City of Malibu. Board staff raised concerns regarding potential cumulative impacts from other proposed development projects in the City of Malibu. The Board reiterated its comments in a letter dated November 7, 2007. The EIR responded to this comment letter¹.
- Board staff alleges plainly in its Tentative Order dated December 17, 2009 that *"In the 31 months following the initial incomplete ROWD on March 2, 2007, the applicant changed its design and operating approach and revised the ROWD in many supplemental submittals."* This characterization of La

• ¹ The FEIR, which was certified on November 10, 2008 by the City of Malibu addressed all of the Board's comments adequately including Board concerns regarding potential cumulative impacts from wastewater disposal. See also the court's decision in Santa Monica Baykeeper v. City of Malibu, et. al., Los Angeles Superior Court Case No BS118289; Oder Denying Writ issued December 21, 2009 wherein the court held that the La Paz Project would not have any cumulative impacts to water quality.

Paz's application implies that La Paz haphazardly modified its application thus causing delays to the processing thereof. La Paz objects to this characterization of events inasmuch as all project revisions were precipitated by comments from Board staff. Specifically, while La Paz maintains that its project wastewater treatment and disposal strategy never posed a cumulatively considerable impact as alleged by Board staff, La Paz, in response to concerns articulated by Board staff, voluntarily revised its approach in January of 2008 in submitting its "No discharge" Title 22 Wastewater Treatment Plant Design. This design was submitted to Board staff on January 8, 2008 for staff's consideration and in response to staff's stated concerns in their November 7, 2007 La Paz DEIR comment letter.

- On January 8, 2008, La Paz representatives met with Board staff on behalf of La Paz to discuss the No Discharge Wastewater Treatment Plant ("WWTP") Design as well as the status of La Paz's application. At that meeting, Executive Director Egoscue promised to expedite the processing of the new WWTP design which was submitted that same day. Executive Officer Egoscue stated that she and her staff were very enthusiastic about the prospect of La Paz's proposed No Discharge Title 22 wastewater system.
- On January 15, 2008 staff issued its first written notice of incomplete application filing (discussed further infra).
- From January 15, 2008 until February 15, 2008 the applicant's representatives met with and corresponded with Board staff in an effort to expedite its application. The applicant's representatives submitted additional materials and information requested by Board staff in an effort to complete its application for filing and expedite the matter for a hearing.
- February 15, 2008. The Board issues its second letter of incompleteness. The Board's February 15, 2008 letter Notification of Incomplete Application for Waste Discharge Requirements identifies five (5) issues that need to be addressed:
 1. A Title 22 Engineering Report with the California Department of Public Health (CDPH) must be approved before the ROWD will be finalized.
 2. The design must be modified to meet the plumbing code assumptions for water use even if the WDR/WRR is for lower discharge volumes, which has been performed.
 3. Documentation on the operation of existing irrigation systems must be provided to confirm the ET estimates.
 4. The waste discharge from the project must be accommodated in the subsurface after consideration of the discharges from Malibu Lumber, Legacy Park WWTP, and Legacy Park Storm water disposal in the worst case.
 5. You [applicant] must specify the odor control features.

- From February 15, 2008 until April 2, 2008 the applicant's representatives met in person with and coordinated via telephone and emails with Board staff members in an effort to provide all information requested by Board staff.
- April 1, 2008. The La Paz Development Wastewater Master Plan, dated April 1, 2008, was submitted to the Board on April 2, 2008 for review and comment. The April 1, 2008 Plan addressed the Board's February 15, 2008 letter (5) issues as follows:
 1. **Title 22 Engineering Report approval by CDPH.** La Paz disagreed as to the need for the CDPH Title 22 Engineering Report Approval at this stage of its project. La Paz advised the Board that Title 22 Engineering Report approval by the CDPH is performed after Construction Plans and Specifications are prepared. Notwithstanding La Paz's objection, La Paz requested and received CDPH approval of its Engineering Report on two separate occasions, with CDPH approval of the conceptual design on May 30, 2008 and CDPH approval of the Title 22 Engineering Report for the Production, Distribution and Use of Title 22 Disinfected Tertiary Recycled Water on July 23, 2009.
 2. **The treatment design must meet the plumbing code assumptions for water use.** La Paz modified its project treatment design to meet the plumbing code flows in accordance with Board staff's request to do so in its February 15, 2008 letter. The May 6, 2009 Title 22 Engineering Report provides for treatment of code flows as requested.
 3. **Documentation on existing irrigation systems to confirm the ET estimates.** La Paz disputed the need for this request as the ET estimates were developed using CA Department of Water Resources (DWR) published and industry standard techniques. As noted in a companion correspondence, we have provided the Board with a summary of 10 years of irrigation and ET information from the nearby (less than one mile) Pepperdine University Title 22 recycled water irrigation system and ET measurement facilities which substantiate the following significant matters:
 - a. ET in the Malibu Civic Center area is 120% of CIMIS data that was used as the basis of the La Paz wastewater Plan. The implications of this data is that the La Paz reuse system is conservatively designed, i.e., estimates on wastewater reuse for irrigation in La Paz's Title 22 Engineering Report are conservative.
 - b. Groundwater recharge occurring below irrigated areas is not materially different than in non-irrigated areas in the Malibu Civic Center. Consequently there is no basis upon which to find that any appreciable groundwater mounding impacts are likely to occur.
 4. **Project discharge accommodated in the sub-surface after consideration of the discharges from Malibu Lumber, Legacy Park WWTP, and Legacy Park Storm water disposal in the worst case.** La Paz has provided the Board with

a "Steady State Groundwater Study" with several addendums as well as the "Transient Modeling" requested by Board staff. La Paz's Title 22 Engineering Report contains all requisite modeling requested by the Board. This modeling demonstrates conclusively that both standard irrigation practices as well as any potential emergency discharge of off specification effluent will not have any appreciable or cumulatively considerable impact on groundwater levels. Conversely, any changes in groundwater conditions caused by others will not affect La Paz wastewater management.

5. Specify the odor control features. Contained within April 1, 2008 Master Plan.

- On May 2, 2008 Board staff member Elizabeth Erickson stated (via email correspondence) that receipt of conceptual approval from the CADPH would complete La Paz's *application*. In this email, Ms. Erickson also requested that two other Malibu development projects, i.e., the Malibu Lumber Yard and the Windsail development projects, receive only conceptual approval by CADPH of their proposed Title 22 Wastewater Treatment Plants prior to the Los Angeles Regional Water Quality Control Board issuing WDR/WRRs for those projects. Ms.. Erickson clearly acknowledged that CADPH review and approval of the Final Title 22 Engineering Report for those projects would occur after permitting by the Board.
- Board staff failed to respond to the applicant's April 3, 2008 application submittal packet in writing within 30 days as required by the Permit Streamlining Act.
- On June 11, 2008 the applicant and its representatives received a letter from Board Executive Officer Tracy Egoscue stating that the Board will not complete La Paz's application for processing until such time as the Board has received evidence of CEQA review completion (i.e., a Notice of Decision of project approval and certification of the projects' EIR). This is the first time that the Board has presented in writing this reason for delaying permit processing.
- During the months of June and July of 2008 the City of Malibu and the CADPH conducted their reviews of the April 1, 2008 La Paz Engineering Report (submitted to the Board on April 3, 2008) and both agencies issued project concept review approvals.
- From July 2008 until November of 2008 the City of Malibu conducted multiple hearings to review the La Paz .15 and .20 Projects (Planning Commission Meetings and City Council hearings).
- On November 10, 2008 the City Council for the City of Malibu approved both Projects and certified the FEIR.
- On November 24, 2008 the City Council conducted a second reading of the ordinance which is intended to implement the Malibu La Paz Development

Agreement and associated project entitlements for the .20 Development Agreement Project. Shortly thereafter the City issued its Notice of Determination ("NOD") which was posted in the Los Angeles County Recorder's Office and submitted to the State Clearing House as required by Law.

- On December 2, 2008 Schmitz sent an email correspondence to Elizabeth Erickson, Board staff member, confirming that the project has been approved and the EIR certified; Schmitz, on behalf of the applicant, attached the NOD to the correspondence for both projects and stated that the project should now be considered "complete" for processing in accordance with the June 11, 2008 letter from the Executive Officer of the Board.
- Board staff did not respond to the applicant's December 2, 2008 submittal within 30 days as required by law. The application was deemed complete as a matter of law pursuant to the Permit Streamlining Act as of January 2, 2009. Board staff did not respond in writing to the applicant's December 2, 2008 correspondence until February 23, 2009.
- February 12, 2009: La Paz legal counsel Stanley Lamport, Esq. of Cox Castle & Nicholson sent a letter to the Board asserting that La Paz's application has been deemed complete as a matter of law pursuant to the Permit Streamlining Act.
- March 11, 2009: Jeffrey Ogata, Legal Counsel for the SWRCB responded to La Paz's legal Counsel's assertions denying that the application was in fact complete. The Board requested, inter alia, that La Paz prepare a Title 22 Engineering Report for the Production, Distribution and Use of Title 22 Disinfected Tertiary Recycled Water ("Title 22 Engineering Report") and associated engineering drawings and obtain final CADPH approval of the same before the Board can complete the application. No other similarly situated applicant has been asked to do this. This goes against standard policy which is to obtain final review and approval from CADPH after the Board issues the discharge permit with conditions (WDR/WRR). Mr. Ogata's statements are contrary to what Board staff had previously articulated to the applicant regarding CADPH processing as a prerequisite to application completion. As noted in the previously referenced May 2, 2008 email correspondence from Board staff member Elizabeth Erickson to Chi Diep at CADPH, only conceptual review from CADPH would be required to deem La Paz's application complete for processing.
- Notwithstanding La Paz's position that its application had been deemed complete and that final approval from the CADPH of its Title 22 Engineering Report was unnecessary to complete its WDR/WRR application, La Paz agreed to prepare the Title 22 Engineering Report and associated materials and submit the same to CADPH for its "final" approval. From March 11, 2009 to May 12, 2009 La Paz prepared engineering drawings to be used in its Title 22 Engineering Report which were sufficient to obtain final approval from CADPH. As previously noted, other similarly situated projects were not required to prepare engineering drawings prior to obtaining permit approval from the Board.

- On April 24, 2009 La Paz representatives met with Board staff to review La Paz's Title 22 Engineering Report and accompanying materials. Staff advised that La Paz would have to modify its Wastewater Treatment System Design in several respects or the Board would not process the project or complete the application. Specifically, during this meeting staff member Wendy Phillips stated for the first time that unless La Paz takes the following actions Board staff would not complete La Paz's application or schedule its permit matter for hearing: 1. Modify the ROWD to completely prohibit any and all discharge including any emergency discharge that may be required by Title 22 of the California Code of Regulations; 2. Agree to add a process of reverse osmosis to the system to remove salts from wastewater prior to reuse for irrigation; 3. Place lysimeters beneath the leach fields to measure wastewater discharge and; 4. Place several groundwater monitoring wells *off-site* at legacy park or on adjacent properties in an effort to ascertain any potential contribution that La Paz's system may have on adjacent properties (groundwater mounding). The requests to modify La Paz's design as specified by Board staff during the April 24, 2009 meeting were not previously requested of the applicant at any time prior to said meeting.
- On May 12, 2009 La Paz submitted its engineering report to the CADPH for final approval.
- On May 21, 2009 La Paz representatives received an email from Board staff member Elizabeth Erickson reiterating that the Board would not permit any discharge, emergency or otherwise by La Paz.
- On May 22, 2009 Tamar Stein, Esq., legal counsel for La Paz, responded to Ms. Erickson's email correspondence of May 21, 2009 stating that it was unlawful and otherwise inappropriate for Board staff to mandate that the applicant modify its wastewater treatment plant design as a prerequisite to the applicant receiving a hearing on its application or as a prerequisite to project approval.
- La Paz obtained FINAL approval of its Title 22 Engineering Report from the CADPH on July 23, 2009. This approval was transmitted to the Board on the same day it was received.
- On July 23, 2009 La Paz filed its petition with the State Water Resources Control Board ("State Board") for review of a failure of the Regional Board to act on its application. The petition is currently pending before the State Board (A-2036).
- La Paz subsequently followed all procedures required under the Permit Streamlining Act and notified the Board and the General Public that its application was deemed approved by operation of law. La Paz maintains that its application was deemed approved as of August 31, 2009 due to inaction by the Board on its application.

- On December 17, 2009 La Paz received notice that the Board intended to convene a hearing on February 4, 2010 to review La Paz's ROWD Application. It is La Paz's position that La Paz is currently permitted to discharge as a matter of law and that any action taken by the Board must be taken in compliance with §2208 of Title 23 of the California Code of Regulations regarding subsequent Board consideration of a permit matter previously approved as a matter of law in accordance with the Permit Streamlining Act and the Water Code.
- c. On January 10, 2008, the applicant's new engineering consultant met with staff to provide a briefing of significant deviations to the treatment and disposal systems proposed in the initial ROWD. Included in a submittal on that day was a preliminary design for the addition of ultraviolet disinfection, and a lowered estimate of wastewater flow from the proposed development, from 30,000 gpd to 21,000 gpd. The consultant also discussed a possible groundwater extraction system to control mounding on the site. Staff asked the consultant to provide clarification of the proposal for extracting groundwater, including disposal of the extracted groundwater, which would likely contain wastewater.
- 3(c):** The applicant proposed groundwater extraction as one possible means of achieving a mass water balance. The feasibility of the applicant's design did not then and does not currently propose groundwater extraction; rather this was a topic the applicant wished to discuss with the Board staff. La Paz's Engineering Report adequately describes the manner in which it will achieve mass balance of a No Wastewater Discharge System.
- d. On December 2, 2008, the applicant advised staff that the City of Malibu overrode comments from the Regional Board in certifying an environmental impact report on the applicant's project on November 10, 2008.
- 3(d):** The City responded adequately to the Board's comments in the Responses to Public Comments section of the FEIR for La Paz; it did not "override" comments by the Board as is stated in this paragraph.
- e. On December 11, 2008, the applicant's representative testified before the Regional Board that the applicant intended to modify the ROWD to recycle all wastewater generated on site.

(3)(e): First it is unclear to La Paz who the Board is referring to in this paragraph. Who is the "applicant's representative?" The applicant does not have a copy of the December 11, 2008 meeting minutes and cannot deny or confirm the precise comments made at that hearing; however the administrative record clearly demonstrates that from January 2008 until present the applicant has consistently proposed 100% recycling and reuse of its wastewater onsite (No Discharge). The applicant's submittals throughout 2008 demonstrate its intent to recycle all

wastewater generated on site. There were no significant project changes contemplated during the December 11, 2008 hearing.

- g. On May 14, 2009, the applicant submitted an engineering plan to supplement its ROWD, including an increase in flow to 37,000 gpd. However, the applicant's submittal did not respond to all of staff's concerns expressed at the meeting on April 21, 2009.

(3)(g): The Tentative Order does not specify which of staff's concerns have not been addressed. La Paz can only assume that the Board's "concerns" relate to staff's requested changes in treatment plant design which were as previously noted inappropriately made by staff in violation of Water Code §13360. The increase in flow was solely responding to staff's requirement for design based upon code flows as was requested in the Board's February 28, 2008 incompleteness letter (i.e., that change was driven by Board staff comments). The applicant submitted the Title 22 Engineering Report for the Production, Distribution & Use of Title 22 Disinfected Tertiary Recycled Water as requested by the Board. It is La Paz's contention that the report contains more than sufficient information necessary to process La Paz's permit and that the Board staff appears to be taking issue with the manner of compliance proposed by the applicant not the purported lack of information presented by the applicant.

- f. April 21, 2009: comments provided during a meeting, including, among others, (i) the proposal did not appear to be a 'zero discharge' project (given an anticipated rise in the water table), (ii) the engineering report needed further design development; and (iii) a proposed provision for emergency discharge would not be protective of water quality.

4(f): La Paz does not agree with Board staff's comment that there is "an anticipated rise in the water table." Nothing in La Paz's engineering report or accompanying materials predict a rise in the groundwater table. La Paz acknowledges that it prepared and submitted a transient water mounding study as part of its April 2, 2009 Title 22 Engineering Report; that this study did model "temporary" rises in groundwater beneath certain areas of the leach fields used for "emergency" discharge of off specification flows; however, La Paz maintains that its no discharge system will not, under normal operating conditions, create any rise in groundwater. La Paz's project engineer, Lombardo & Associates, Inc., will be submitting additional materials under separate cover providing 10 years of data for Pepperdine University demonstrating that standard irrigation practices with reclaimed water can and do achieve a mass balance without occasioning a rise in groundwater levels contrary to the Board staff's assertions. While temporary and cumulatively inconsiderable rises in groundwater may occur due to off-specification discharges, these events are not anticipated to occur with any regularity and, as noted in the FEIR and the Title 22 Engineering Report, will not impact groundwater quality or the functioning of existing septic systems on adjacent properties. While the applicant is pleased to present its "No Discharge" system to the Board it should be noted that "No Discharge" is not a prerequisite to achieving compliance with the applicable TMDLs, rules and regulations applicable to La Paz's project.

Regarding comment (iii) the Board provides no support for this contention. The discharge of off specification effluent would still be high quality effluent and would need to meet the rigorous standards for discharge that would be specified in La Paz's WDRs.

The Board did not require the Malibu Lumber Project to store off specification effluent. La Paz maintains that any off-specification effluent will be discharged in conformance with the water quality standards established by the Basin Plan and the TMDLs established for the region.

5. On July 23, 2009, DPH approved a report submitted by the applicant (intended to comply with title 22, California Code of Regulations), which contained a conceptual engineering design for the water reuse component for the proposed development. DPH conditioned the approval on, among other conditions, (a) submission of additional engineering details on the plumbing design, operation of the disinfection system, and development of recycling rules and requirements for tenants reusing the treated wastewater; and (b) approval by the Regional Board, as DPH's purview is limited to reuse of the treated wastewater in a manner protective of public health, and does not extend to protection of beneficial uses of state water resources.

5. It is a misstatement that the July 23, 2009 CADPH approval was only for a conceptual design. La Paz provided complete CADPH Title 22 Engineering Report documents and designs. The additional details CADPH requested are provided as part of final design. The Tentative Order does not take into account that the CADPH does not normally review projects until Construction Documents are prepared or facilities built. The CADPH stated that they have only reviewed one other project at this early stage of project development comparable to the La Paz project. Nothing in the Memorandum of Understanding between the State Water Resources Control Board and the CADPH requires any documentation to be provided, reviewed or approved beyond what La Paz has already provided.

10. On November 5, 2009, the Regional Board adopted Resolution No. R4-2009-007, amending the *Basin Plan* to prohibit discharges from onsite wastewater disposal systems in the Malibu Civic Center area, as defined by that *Basin Plan* amendment. The applicant's proposed discharge is within the boundaries of the prohibition, and is subject to the prohibition on new discharges of waste.

10. La Paz avers to Board staff's application of the Basin Plan Amendment ("BPA") to its project. §13245 of the CA Water Code States that no Basin Plan Amendment shall be effective and have the force of law until such time as the State Water Resources Control Board shall approve it; hence, as the State Water Resources Control Board has yet to approve the BPA the Regional Board may not proscribe discharges based thereupon. La Paz is not subject to the pending BPA.

14. With respect to the incomplete ROWD submitted by La Paz, the Regional Board has taken into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, and the need to prevent nuisance.

14. La Paz objects to the conclusory nature of the findings in paragraph 10 which are not sufficient to find a "nuisance" so as to justify prohibiting discharge. It appears that the Board is alleging that the findings in 13263 cannot be made; however, the Board provides no support for this contention whatsoever. The Board has recently approved

17,000 gallons per day of discharge at the adjacent Malibu Lumber site. La Paz's project is superior to the Malibu Lumber project because La Paz proposes zero discharge of effluent (vs. 17,000 gpd) and La Paz has much greater depth to groundwater beneath its proposed leach fields thus allowing for superior site conditions upon which to naturally remove any remaining contaminants. The Tentative Order does not explain why the Lumber Yard project which is directly adjacent to La Paz's site can be permitted and found to be consistent with all rules and regulations while La Paz's project is alleged to be inconsistent. La Paz contends that such findings cannot be made and that its project is being treated disparately without any scientific basis upon which to support such disparate treatment.

15. The Regional Board also has considered the provisions of Water Code section 13241 and the relevant water quality control plans that have been adopted.

15. La Paz does not concur with this finding. The finding is entirely conclusory and without any factual support. See applicant's responses to paragraphs 10 and 14 which are incorporated herein by reference.

16. La Paz has failed to provide a complete Report of Waste Discharge, the result of which is the inability of the Regional Board to prepare Waste Discharge Requirements that would allow the La Paz project to discharge wastewater.

16. La Paz does not concur with Board staff that its ROWD is incomplete and further objects that the Board does not currently have enough information to write a permit for discharge and recycling requirements.

17. Staff provided adequate response to the ROWD and modifications.

17. As explained above, Board staff did not comply with the Permit Streamlining Act provisions previously referenced or with the provisions of §13264(a)(2) of the Water Code.

18. As currently proposed, La Paz cannot discharge waste without impairing the water quality of the Malibu Valley Groundwater Basin, or creating a nuisance.

18. La Paz does not concur with this finding. The finding is entirely conclusory and without any factual support. See applicant's responses to paragraphs 10 and 14 which are incorporated herein by reference.

19. Further, there are existing and continuing violations of State and Regional Board water quality standards in the City of Malibu that were addressed by the Regional Board in its November 5, 2009 *Basin Plan* amendment adopting a prohibition of wastewater discharges from onsite wastewater disposal systems. That prohibition applies to the La Paz project.

19. La Paz does not concur with this finding. See applicant's responses to paragraphs 10 and 14 which are incorporated herein by reference.

20. La Paz failed to submit a complete and adequate ROWD, which demonstrates that the proposed recycling project would meet water quality objectives in the *Basin Plan* that are protective of beneficial uses designated by the Regional Board for groundwater and nearby surface waters.

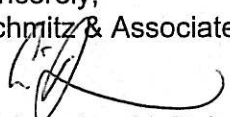
20. La Paz does not concur with this finding. The finding is entirely conclusory and without any factual support. See applicant's responses to paragraphs 10 and 14 which are incorporated herein by reference.

21. Issuance of waste discharge requirements for the La Paz project, as currently proposed, would not be protective of beneficial uses in the Malibu Valley Groundwater Basin and nearby surface waters.

21. La Paz does not concur with this finding. The finding is entirely conclusory and without any factual support. See applicant's responses to paragraphs 10 and 14 which are incorporated herein by reference.

This concludes our comments on the Board's Tentative Order. La Paz's legal counsel and Wastewater Engineer will be submitting other correspondence and materials under separate cover. Should you have any questions please do not hesitate to contact us.

Sincerely,
Schmitz & Associates, Inc.



Christopher M. Deleau
Special Projects Manager